

## ELIGIBILITY CRITERIA FOR CLAIMS RELATING TO COVERED BERYLLIUM ILLNESS

**§ 30.205 What are the criteria for eligibility for benefits relating to covered beryllium illness?**

To establish eligibility for benefits under this section, the claimant must establish the criteria set forth in paragraphs (a) and (b) of this section:

(a) The employee is a covered beryllium employee by establishing:

(1) The employee is a "current or former employee as defined in 5 U.S.C. 8101(1)" (see § 30.5(r) of this subpart) who may have been exposed to beryllium at a DOE facility or at a facility owned, operated, or occupied by a beryllium vendor; or

(2) The employee is a current or former employee of:

(i) Any entity that contracted with the DOE to provide management and operation, management and integration, or environmental remediation of a DOE facility; or

(ii) Any contractor or subcontractor that provided services, including construction and maintenance, at such a facility; or

(iii) A beryllium vendor, or of a contractor or subcontractor of a beryllium vendor, during a period when the vendor was engaged in activities related to the production or processing of beryllium for sale to, or use by, the DOE; and

(3) The employee was exposed to beryllium in the performance of duty by establishing that he or she was:

(i) Employed at a DOE facility (as defined in § 30.5(o) of this subpart); or

(ii) Present at a DOE facility, or a facility owned and operated by a beryllium vendor, because of his or her employment by the United States, a beryllium vendor, or a contractor or subcontractor of the DOE; during a period when beryllium dust, particles, or vapor may have been present at such a facility.

(b) The employee has one of the following:

(1) Beryllium sensitivity as established by an abnormal beryllium LPT performed on either blood or lung lavage cells.

(2) Established chronic beryllium disease.

(3) Any injury, illness, impairment, or disability sustained as a consequence of the conditions specified in paragraphs (b), (1) and (2) of this section.

**§ 30.206 How does a claimant prove that the claimant was a "covered beryllium employee" exposed to beryllium dust, particles or vapor in the performance of duty?**

(a) Proof of employment at or physical presence at a DOE facility, or a facility owned and operated by a beryllium vendor, because of employment by the United States, a beryllium vendor, or a contractor or subcontractor of the DOE during a period when beryllium dust, particles, or vapor may have been present at such a facility, may be made by the submission of any trustworthy contemporaneous records that, on their face or in conjunction with other such records, establish that the employee was employed or present at a covered facility and the time period of such employment or presence.

(b) Contemporaneous records from the following sources may be considered as evidence for purposes of establishing employment or presence at a covered facility:

(1) Records or documents created by any federal government agency (including verified information submitted for security clearance), any tribal government, or any state, county, city or local government office, agency, department, board or other entity, or other public agency or office.

(2) Records or documents created by any vendor, processor, or producer of beryllium or related products designated as a beryllium vendor by the DOE in accordance with section 3622 of the Act.

(3) Records or documents created by any regularly conducted business activity or entity that acted as a contractor or subcontractor to the DOE.

**§ 30.207 How does a claimant prove diagnosis of a covered beryllium disease?**

(a) Written medical documentation is required in all cases to prove that the employee developed a covered beryllium illness. Proof that the employee

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developed a covered beryllium illness must be made by using the procedures outlined in paragraphs (b), (c), (d), or (e) of this section.

(b) Beryllium sensitivity or sensitization is established with an abnormal LPT performed on either blood or lung lavage cells.

(c) Chronic beryllium disease is established in the following manner:

(1) For diagnoses on or after January 1, 1993, beryllium sensitivity (as established in accordance with paragraph (b) of this section), together with lung pathology consistent with chronic beryllium disease, including the following:

(i) A lung biopsy showing granulomas or a lymphocytic process consistent with chronic beryllium disease;

(ii) A computerized axial tomography scan showing changes consistent with chronic beryllium disease; or

(iii) Pulmonary function or exercise testing showing pulmonary deficits consistent with chronic beryllium disease.

(2) For diagnoses before January 1, 1993, the presence of the following:

(i) Occupational or environmental history, or epidemiologic evidence of beryllium exposure; and

(ii) Any three of the following criteria:

(A) Characteristic chest radiographic (or computed tomography (CT)) abnormalities.

(B) Restrictive or obstructive lung physiology testing or diffusing lung capacity defect.

(C) Lung pathology consistent with chronic beryllium disease.

(D) Clinical course consistent with chronic respiratory disorder.

(E) Immunologic tests showing beryllium sensitivity (skin patch test or beryllium blood test preferred).

(d) An injury, illness, impairment or disability sustained as a consequence of beryllium sensitivity or established chronic beryllium disease must be established with a fully rationalized medical report by a physician that shows the relationship between the injury, illness, impairment or disability and the beryllium sensitivity or established chronic beryllium disease. Neither the fact that the injury, illness, impairment or disability manifests itself after a diagnosis of beryllium

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sensitivity or established chronic beryllium disease, nor the belief of the claimant that the injury, illness, impairment or disability was caused by the beryllium sensitivity or established chronic beryllium disease is sufficient in itself to prove a causal relationship.

(e) The Secretary of Health and Human Services may, from time to time, and in consultation with the DOE, specify additional means of establishing the existence of a covered beryllium illness.

### ELIGIBILITY CRITERIA FOR CLAIMS RELATING TO CANCER

#### § 30.210 What are the criteria for eligibility for benefits relating to cancer?

To establish eligibility for benefits for cancer, an employee or his or her survivor must show that:

(a) The employee has been diagnosed with one of the forms of cancer specified in section 4(b)(2) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) and set forth in § 30.5(dd) of this subpart; and

(1) Is a member of the Special Exposure Cohort (as described in § 30.213(a) of this subpart) who, as a DOE employee or DOE contractor employee, contracted the specified cancer after beginning employment at a DOE facility; or

(2) Is a member of the Special Exposure Cohort (as described in § 30.213(a) of this subpart) who, as an atomic weapons employee, contracted the specified cancer after beginning employment at an atomic weapons employer facility (as defined in § 30.5(e)); or

(b) The employee has been diagnosed with cancer; and

(1) Is/was a DOE employee who contracted that cancer after beginning employment at a DOE facility; or

(2) Is/was a DOE contractor employee who contracted that cancer after beginning employment at a DOE facility; or

(3) Is/was an atomic weapons employee who contracted that cancer after beginning employment at an atomic weapons employer facility; and